

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company of Illinois	:	
	:	
Petition for a Certificate of Public Convenience	:	
and Necessity, pursuant to Section 8-406.1 of	:	
the Illinois Public Utilities Act, and an Order	:	
pursuant to Section 8-503 of the Public Utilities	:	No. 12-0598
Act, to Construct, Operate and Maintain a New	:	
High Voltage Electric Service Line and Related	:	
Facilities in the Counties of Adams, Brown, Cass,	:	
Champaign, Christian, Clark, Coles, Edgar,	:	
Fulton, Macon, Montgomery, Morgan, Moultrie,	:	
Pike, Sangamon, Schuyler, Scott, and Shelby,	:	
Illinois.	:	

**RESPONSE OF MOULTRIE COUNTY PROPERTY OWNERS TO
MOTION TO STRIKE ALTERNATIVE ROUTES**

COME NOW the Moultrie County Property Owners ("MCPO"), by and through their attorneys, Lueders, Robertson & Konzen, and in response to the Motion to Strike ("Motion") MCPO's Alternate Routes filed by the Coalition of Property Owners and Interested Parties in Piatt, Douglas, and Moultrie Counties ("PDMO") state as follows:

PDMO (supported by the Shelby County Landowners Owners Group) makes two basic arguments in support of its Motion.¹ First, that the Alternative Routes proposed by MCPO should be stricken as "too ill-defined". (See, PDMO Motion at 1-2) Second, that MCPO's Mt. Zion to Kansas Route (described in MCPO's Corrected Exhibit A on the Commission's e-docket on January 2, 2013), be stricken as "not timely filed." (PDMO Motion at 2-5). PDMO's arguments are without merit and its Motion should be denied. As demonstrated below, MCPO clearly identified its

¹ Shelby County Landowners Group ("SCLG") filed a Response in Support of PDMO's Motion to Strike and, like PDMO, argue that MCPO alternative routes were not timely filed on December 31, 2013 and are ill defined. (SCLG Resp. at 3). MCPO's arguments here apply to the SCLG reasoning as well.

Alternative Routes and timely filed those routes pursuant to the Administrative Law Judges' Case Management Plan of December 14, 2012.

A. TIMELY FILING

1. All parties to this proceeding (ATXI, Staff, Intervenor and the ALJs) have been required to operate on the basis of the abbreviated time period specified in Section 8-406.1 (220 ILCS 5/8-406.1) for the Commission's consideration of and action on ATXI's request for a Certificate of Convenience and Necessity for the construction of the Illinois River's Project. In this particular instance, the initial Case Management Plan, issued on December 14, 2012, directed the Intervenor, in the case at that time, to identify alternative routes for the ATXI transmission line and provide a list of potentially impacted property owners by December 31, 2012. MCPO had a seventeen (17) day period to review and identify potential alternative routes, as well as the potentially impacted property owners. This seventeen (17) day period included the Christmas holidays. MCPO complied with the Case Management Order and as directed, filed its alternative routes on December 31, 2012.

2. Subsequently, it came to the attention of the attorneys for MCPO on New Year's Day, that the wrong maps of the MCPO Alternate Routes had been filed on the Commission's e-docket on New Year's Eve, December 31, 2012. On New Year's Day, MCPO e-mailed the parties in the case and advised (i) there was an errata to the pleading document, and (ii) that wrong copies of the maps had been filed and that the correct maps were being filed. The e-mail included the referenced errata and the correct maps marked as Corrected Exhibits A and B. (*See*, Attachment A, January 1, 2013 e-mail). The attorneys for MCPO also attempted to file this material on the Commission's e-docket on January 1, 2013. However, because January 1 was the New Year's Day holiday, the office of the Clerk of the Illinois Commerce Commission was not open and Corrected Exhibits were, therefore,

officially accepted for electronic filing as of 12:00 a.m. January 2, 2013. (*See*, E-Docket Document List for 12-0598, January 2, 2013).

3. The filing of the correct maps of the MCPO Alternative Routes did not prejudice PDMO or any other party. MCPO advised the parties by e-mail at approximately 12:45 p.m. on New Year's Day, January 1, 2013, that it had filed incorrect maps and was filing the corrected maps for its proposed alternate routes. (*See*, Attachment A, January 1, 2013 e-mail). This was less than 24 hours after the December 31, 2013 filing. The correct maps were available on the Commission's e-docket at 12:00 a.m. on January 2, 2013. PDMO did not intervene in this case until February 19, 2013. SCLG intervened on February 8, 2013. Under the circumstances, neither PDMO, nor any other party was prejudiced by the filing of corrected maps by MCPO.

4. In addition, MCPO notes that the filing of corrected testimony and exhibits before their admission into evidence is customary in Illinois Commerce Commission proceedings. Indeed, in this case, several parties have filed corrected testimony and/or exhibits subsequent to the date established for the filing of such testimony and exhibits. (*See*, for example, Staff's filing of Revised Testimony for Staff witness Rockrohr dated April 10, 2013; *see also*, ATXI Corrected Testimony of ATXI witness Hackman, ATXI Ex. 3.0 filed February 11, 2013.)² There is nothing inherently prejudicial about the filing of corrected testimony and exhibits after the date established for the filing of same.

5. The service of the correct version of the maps of MCPO's Alternative Routes on the parties less than 24 hours after the date established for the filing of alternate routes and the

² The ALJs themselves directed and permitted certain parties to supplement their Alternate Route filings after December 31, 2012. (*See*, ALJ Notice of Ruling, Jan. 2, 2013).

availability of same on the e-docket at 12:00 a.m. on January 2, 2013, did not prejudice any party to this proceeding, and is not a basis for striking that route for failure to timely file same as argued by PDMO.

B. ILL-DEFINED ROUTES

1. PDMO also argues that MCPO's routes filed on December 31, 2012 should be stricken as too ill-defined. (PDMO Motion at 1-2).³ The correct maps filed by MCPO show the centerline of its proposed route within a corridor extending one mile on either side of the centerline. Given the relatively short time period available for the identification of alternate routes, and the probability that certain adjustments or refinements to any proposed route may be shown to be necessary in the course of the evidentiary proceeding in this case, use of an analysis corridor that would allow such adjustments or refinement was prudent and reasonable. MCPO's corrected maps show the location of its proposed route with the same degree of specificity as the maps and drawings provided by other parties in their proposed alternate routes and with the same degree of specificity as the maps offered by ATXI, showing the location of its primary and alternate routes for the Illinois Rivers Project throughout the State of Illinois.

2. Indeed, the routes as identified by MCPO were sufficiently identified to allow Staff witness Rockrohr to evaluate the routes. (*See*, Rockrohr, Staff Ex. 1.0R at 45-49). PDMO witnesses were also able to identify MCPO's proposed route with sufficient specificity so as to permit the filing of direct testimony challenging the location of the route through Piatt and Douglas counties and describing the potential effect on their property. (*See*, Direct Testimony of Mary Burns, Howard

³ As explained in Part A above, the route maps filed on December 31 were not the correct maps of MCPO's proposed routes.

Kamm and Dave Hrupsa, PDMO Exs. 1, 2, and 3; *see also*, Direct Testimony of SCLG witnesses Larry Durbin, Ginger Durbin and Joesph Woodall, SCLG Exs. 1, 2, and 3 responding to MCPO routes and describing potential effects on their property).

3. Furthermore, the schedule in this case gave parties the opportunity to file an additional round of testimony in reply to the direct testimony filed by Staff and other Intervenor on March 29, 2013. Thus, all parties had the opportunity to reply to any refinements, adjustments, comments or testimony offered on MCPO's proposed routes. Furthermore, extensive discovery has been filed with MCPO regarding its proposals. MCPO has responded to seven sets of data requests from ATXI, one set from PDMO and one set from the SCLG. Copies of all the MCPO responses to all these data requests have been served upon the parties requesting copies of same, including PDMO and SCLG. In addition, responses have been updated and supplemented. There has been ample opportunity for PDMO to verify the location of MCPO's alternative routes and to respond to same in testimony. The correct maps filed on January 2, 2013 by MCPO identify the location of its proposed routes and show the centerline of each route, assuming a 150 foot right-of-way. There is no basis for striking MCPO's proposed routes on the grounds that they are too "ill-defined."

4. Finally, MCPO notes that there is nothing in the Case Management Plan that specifies how alternative routes are to be identified. Even assuming for the sake of argument that MCPO's identification of its alternate route is unique in this case, as suggested by PDMO, (PDMO Motion at 2), the fact that MCPO may have described or presented its proposed routes in a unique manner is not a basis for striking same. Indeed, the Case Management Plan contemplates that parties may present routes that are different from those they originally proposed, stating that parties are "free to

rescind” their route recommendations “but upon doing so may not propose another new alternative route affecting previously unidentified landowners.” (Case Management Plan at 4).

C. CONCLUSION

MCPO has fully complied with the Case Management Plan, timely filed its Routes pursuant to said plan and identified same, in a manner that was not prejudicial to any party.

WHEREFORE, PDMO’s Motion to Strike should be denied.

Respectfully submitted,

BY: 

Eric Robertson
Lueders, Robertson & Konzen LLC
P. O. Box 735
Granite City, IL 62040
618-876-8500
erobertson@lrklaw.com

77904.1

Eric Robertson

From: Barbara Brandt
Sent: Tuesday, January 01, 2013 12:45 PM
To: Albers, John; Dominick, Erica; Fitzhenry, Ed; Christopher Flynn ; Elias Mossos (emossos@mwcllc.com); Olivero, James; Ratcliffe, Kathleen; Rockrohr, Greg; Segal, Rebecca; Sturtevant, Albert; Tomc, Matthew; Whitt, Mark; Yoder, Stephen; Zehr, Anne; Kelly Armstrong (karmstrong@icc.illinois.gov); Kimberly W. Bojko (bojko@carpenterlipps.com); Colleen A. Check (check@carpenterlipps.com); Eric E. Dearmont (edearmont@ameren.com); Joseph L. Lakshmanan ; Shannon K. Rust ; Matthew Dorestt (mdorsett@misoenergy.org); Balough, Richard; Kyle C. Barry (kbarry@mwcllc.com); Sean Brady (sbrady@windonthewires.org); Hampton, Rachel; Harvey, Matthew; Joseph Hooker (joseph.hooker@ci.champaign.il.us); Kennedy, Christopher; MacBride, Owen; mcnamara.evans@gmail.com; Christopher Skey (christopher.skey@quarles.com); Christopher Townsend (christopher.townsend@quarles.com); Balough, Cheryl; Christopher M. Ellis (cellis@brelaw.com); G. Ronald Kesinger (kesingerlaw@frontier.com); Adam T. Margolin (adam.margolin@quarles.com); mcnamara.evans@gmail.com; Gregory & Theresa Pearce (wrenchandchalk2@aol.com); Jon Robinson (jrobinson@brelaw.com); Johnie T. Snedeker (tesned@digcomsrv.com); Erin Szalkowski (eszalkowski@cleanlineenergy.com); Timothy J. Tighe (ttighe@brelaw.com); Bradley B. Wilson (brad@gwspc.com); Eric Robertson; Mark Weinheimer (MWeinheimer@polsinelli.com); Reed, Darryl; Gerald Ambrose (gambrose@sidley.com); aanker@ppi.coop; Breden, Daniel; Stephen P. Clevenger (sclevenger@family-net.net); Edward F. Flynn (eflynn@family-net.net); Erick F. Hubbard (ehubbard@family-net.net); Brian R. Kalb (brk@bcplaw.com); Joel W. Kanvik (joel.kanvik@enbridge.com); Forrest G. Keaton (fkeaton@rblawyers.net); Richard H. Niemann (rniemannjr@niemannfoods.com); Angela M. Weis (aweis@sidley.com); Mark Weinheimer (MWeinheimer@polsinelli.com); Robert H. Alvine (sarattorneys@hotmail.com); Martha Krohe (martha@burrusseed.com); Joseph D. Murphy (jmurpy@meyercafel.com); John M. Myers (jmyers@springfieldlaw.com); Jordan H. Walker (jordan@severstorey.com); Barbara & Joseph Bergschneider (paul@lynncpa.com); Gower, Edward; Adam Guetzow (aguetzow@hinshawlaw.com); Luke A. Hagedorn (lhagedorn@polsinelli.com); John T. Long (johnlong@cavanagh-phara.com); Kevin N. McDermott (kevin@kevinmcdermott.com); James Phillips (gabookcompany@aol.com); Tori Phillips (unfun2@aol.com); Tim Shrake (timshrake@cavanagh-ohara.com); Lori Spangler (wmmc106@gmail.com); David Streicker (dstreicker@polsinelli.com); Michael Lockwood (ilrivproj@loptics.com); Donna M. Allen (canuplay40@gmail.com); Laura T. Grotenhuis (cyclone@joink.com); Peggy Mills (peg@turbinesinc.com); Anna, Pamela & Richard Copeland; Cary Kottler (ckottler@cleanlineenergy.com)

Cc: Barbara Brandt
Subject: Ameren IL River Project - ICC Dkt. 12-0598
Attachments: MCPO Errata to Potential Alt. Routes.pdf

Please be advised that the Moultrie County Property Owners have filed an Errata to their Response to the Case Management Order directive to identify alternate routes. Specifically, they have noted a typo in Paragraph 2 of their pleading "Moultrie County Property Owners' Potential Alternate Routes" as filed on December 31, 2012. In the second line of Paragraph 2 of the Pleading, the reference to "Potential Route No. 2" should be corrected to read "Potential Route No. 1". A copy of the Errata is attached.

In addition, subsequent to filing same on December 31, 2012, we noted that we had attached incorrect copies of Exhibits A and B to our responsive pleading. We have filed a corrected Exhibit A and corrected Exhibit B on the e-docket. Copies of those corrected exhibits are being sent to you in multiple e-mails because of their size.

Barbara Brandt, Paralegal
Lueders, Robertson & Konzen, LLC
1939 Delmar Avenue
P. O. Box 735
Granite City, IL 62040
bbrandt@lrklaw.com

Note: Private and Privileged Information. This transmission is directed only to the person or persons named above for their use. It may contain information or materials that are personal, private and/or confidential and that are not intended to, and may not, be disclosed to any other person. If you are not the person to whom this transmission is directed, you are hereby notified that any disclosure, distribution, copying or use of this communication is strictly prohibited. If you have received this communication in error, please delete the original e-mail that we send to you and notify us immediately by telephone at 618-876-8500.

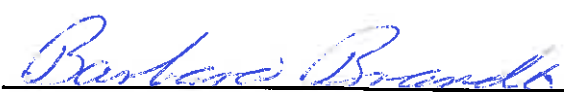
PROOF OF SERVICE

STATE OF ILLINOIS :
 : SS
COUNTY OF MADISON :

I, Eric Robertson, being an attorney admitted to practice in the State of Illinois and one of the attorneys for the Moultrie County Property Owners, herewith certify that I did on the 24th day of April, 2013, electronically file with the Illinois Commerce Commission, the Response of Moultrie County Property Owners to Motion to Strike Alternative Routes, and electronically served same upon the persons identified on the Commission's official service list.


Eric Robertson
Lueders, Robertson & Konzen
1939 Delmar Avenue
P. O. Box 735
Granite City, IL 62040
(618) 876-8500
erobertson@lrklaw.com

SUBSCRIBED AND SWORN to me, a Notary Public, on this 24th day of April, 2013.


Notary Public

